

ESTTA Tracking number: **ESTTA661950**

Filing date: **03/19/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060707
Party	Defendant Knowluxe
Correspondence Address	YIN HUANG CHARLES COLMAN LAW PLLC 419 LAFAYETTE STREET, 6TH FLOOR NEW YORK, NY 10003 UNITED STATES yh@charlescolmanlaw.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Yin Huang
Filer's e-mail	yh@charlescolmanlaw.com
Signature	/ Yin Huang /
Date	03/19/2015
Attachments	knowluxe-mtd-reply-brief.pdf(127823 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Guess? IP Holder L.P.,

Petitioner

v.

Knowluxe LLC,

Respondent.

Cancellation No. 92060707
Registration No. 4,624,401
Application Serial No. 86-224,067

**RESPONDENT’S REPLY BRIEF SUPPORTING RESPONDENT’S MOTION TO
DISMISS**

I. Introduction

Guess? IP Holder L.P. (“Petitioner”) has filed a brief opposing Knowluxe LLC’s (“Respondent”) motion to dismiss Petitioner’s petition for cancellation (the “Motion”). Petitioner, however, does not respond to the Motion with substantive arguments. Rather, Petitioner presents the Board with a boilerplate opposition brief, which has apparently been used in at least two other cancellation proceedings. *See Guess? IP Holder L.P. v. Mighty Media Group, LP*, Cancellation No. 92059746 (T.T.A.B. filed Sep. 24, 2014) (asserting a “GUESS WHAT’S NEXT?” mark); *Guess? IP Holder L.P. v. Media Group, LP*, Cancellation No. 92060290 (T.T.A.B. filed Dec. 23, 2014) (asserting a “GUESS” mark). Because Petitioner does not even pretend to address the arguments presented in the Motion, the Board should dismiss Petitioner’s cancellation petition.

II. Petitioner has not Meaningfully Responded to Respondent’s Arguments for Dismissal

Petitioner’s opposition brief is effectively a non-response to the Motion. The Motion presented several arguments for dismissing the present petition. In particular, Respondent pointed out (a) that Petitioner is trying to obtain a right in gross for the use of triangular marks; (b) that Petitioner’s position regarding the scope of its trademarks is inconsistent with the doctrine of

aesthetic functionality; and (c) that Petitioner, in any event, had not made allegations sufficient to establish a claim for infringement or dilution of its marks. Petitioner addresses none of these arguments in its opposition brief. Instead, Petitioner merely reiterates the *Twombly* standard and its original allegations of trademark infringement (Pet. Br. at 3–4) and trademark dilution (Pet. Br. at 5).

Because Petitioner does not even attempt to refute Respondent’s arguments for dismissal, Petitioner has effectively conceded the Motion. *See, e.g.*, 37 C.F.R. § 2.127(a) (2014); *Central Mfg. Inc. v. Third Millennium Tech., Inc.*, 61 U.S.P.Q.2d (BNA) 1210 (T.T.A.B. 2001); *Gen. Tire & Rubber Co. v. Gendelman Rigging & Trucking Inc.*, 189 U.S.P.Q. (BNA) 425 (T.T.A.B. 1975).

III. Boilerplate Filings are Consistently Discounted

The Board has consistently discouraged the filing of boilerplate documents and has given such documents little weight. *See, e.g.*, *Amazon Techs., Inc. v. Wax*, 93 U.S.P.Q.2d (BNA) 1702, 1703 (T.T.A.B. 2009) (criticizing the use of “boilerplate objections” to interrogatories); *C.H. Stuart Inc. v. Carolina Closet, Inc.*, 213 U.S.P.Q. (BNA) 506, 507 (T.T.A.B. 1980) (criticizing the use of “boiler-plate” discovery requests). Where a requested action is supported only by boilerplate, the Board has declined to take such action. *See, e.g.*, *Amazon*, 93 U.S.P.Q.2d at 1705 (granting a discovery request over boilerplate objections); *C.H. Stuart*, 213 U.S.P.Q. at 507 (denying a motion to compel a party to respond to boilerplate discovery requests).

Courts have similarly frowned upon boilerplate. *See, e.g.*, *Louis Vuitton Malletier v. Flea Market, Inc.*, No. C 09-01062, 2009 U.S. Dist. LEXIS 48757, at *8 (N. D. Cal. Jun. 10, 2009) (finding a “boilerplate paragraph” to be inadequate to plead trademark infringement); *Carson Optical, Inc. v. Prym Consumer USA, Inc.*, 11 F. Supp. 3d 317 (E.D.N.Y. 2014) (finding that “essentially repeat[ing]” allegations from an earlier pleading was insufficient to overcome a motion to dismiss).

Petitioner has done precisely what the Board and the courts have repeatedly instructed litigants not to do. Aside from containing no substantive arguments responding to the Motion,

Petitioner's opposition brief is substantively identical to briefs filed by Petitioner in cancellation proceedings Nos. 92059746 and 92060290. Petitioner's present opposition brief differs from its counterparts in other cancellation proceedings only in the name of the respondent and the mark registrations involved. Therefore, Petitioner's present opposition brief appears not to be a meaningful attempt to respond to the Motion. The Board should accordingly discount its significance.

IV. Conclusion

For the foregoing reasons, Respondent respectfully requests the Board to dismiss Petitioner's petition to cancel Respondent's trademark registration.

Respectfully submitted,

Dated: March 19, 2015

CHARLES COLMAN LAW, PLLC

/ Yin Huang /

Yin Huang
Counsel
Charles Colman Law, PLLC
419 Lafayette Street, 6th Floor
New York, NY 10003
212-960-8949 (main)
212-960-8969 (fax)
yh@charlescolmanlaw.com

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the foregoing reply brief was filed in the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on March 19, 2015.

/ Yin Huang /

Yin Huang
Counsel
Charles Colman Law, PLLC
419 Lafayette Street, 6th Floor
New York, NY 10003
212-960-8949 (main)
212-960-8969 (fax)
yh@charlescolmanlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing reply brief has been served on Gary J. Nelson of Christie, Parker & Hale, LLP by mailing said copy on March 19, 2015, via First

Class Mail to:

Gary J. Nelson
Christie, Parker & Hale, LLP
P.O. Box 29001
Glendale, CA 91209-9001

/ Yin Huang /

Yin Huang
Counsel
Charles Colman Law, PLLC
419 Lafayette Street, 6th Floor
New York, NY 10003
212-960-8949 (main)
212-960-8949 (fax)
yh@charlescolmanlaw.com